

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SUNDANCE, INC., and  
MERLOT TARPAULIN AND SIDEKIT  
MFG. CO., INC.,

Plaintiffs,

-vs-

Case No. 02-73543  
Hon. AVERN COHN

DE MONTE FABRICATING, LTD.;  
QUICK DRAW TARPAULIN SYSTEMS,  
INC. and WALTER DE MONTE,

Defendants.

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**SCHEDULING ORDER**

A.

This is a patent case involving U.S. Patent No. 5,026,109 (the '109 patent). The issues are validity, infringement, laches and inequitable conduct, plus an antitrust counterclaim. Following the filing of an order vacating a stay of proceedings previously entered, the Court held a status conference to chart the future course of the case. This scheduling order memorializes the results of the conference.

B.

1. Proceedings on the antitrust counterclaim have been stayed until further order of the Court. See Scheduling and Stay Order filed April 5, 2006.
2. The issues of validity and infringement have been bifurcated from the issues

of damages and wilfulness. See Pretrial and Scheduling Order filed February 10, 2003.

3. The issue of inequitable conduct is before the Court in the form of a motion for partial summary judgment filed by defendants on July 5, 2006. It has been fully briefed.

4. The issue of laches is subsumed in the issue of damages.

5. The issues of liability (validity and infringement) were tried to a jury which rendered a verdict on May 1, 2006. The jury found that patent invalid and infringed. A JMOL motion by plaintiffs on the finding of invalidity was granted on September 20, 2006. See Memorandum and Order Granting Plaintiffs' Motion for Judgment as a Matter of Law or For a New Trial filed September 20, 2006. Defendants have filed a motion for reconsideration.

6. The Court has filed a judgment on the jury's verdict *nunc pro tunc* May 1, 2006.

C.

Now pending are:

1. Defendants' motion for reconsideration of the order granting plaintiffs' JMOL motion. Plaintiff shall file a response within ten (10) days. Defendants shall file a reply within five (5) days thereafter. Following these filings the Court will set a hearing.

2. Defendants' motion for partial summary judgment on the issue of inequitable conduct. The Court will set a hearing.

3. Plaintiffs' Motion For Permanent Injunction and Memorandum in Support filed November 20, 2006. Defendants shall file a response within ten (10) days. Plaintiffs shall file a reply within five (5) days thereafter. Following these filings the Court will set a hearing.

D.

Still to come is:

1. Defendants' JMOL motion on the jury's finding of infringement. Defendants shall file the motion within twenty (20) days. Plaintiffs shall file a response within ten (10) days thereafter. Defendants shall file a reply within five (5) days thereafter. Following these filings the Court will set a hearing.

2. Trial on the issue of damages. A separate scheduling order shall be entered setting the case for trial. A trial on damages will be held in all events to ensure a complete record.

E.

Any objections to this order shall be filed within five (5) days.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: November 27, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, November 27, 2006, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160